

THE HONORABLE \_\_\_\_\_

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLEICF TECHNOLOGY, INC., a Washington  
Corporation,

Plaintiff,

v.

GOOGLE INC., a Delaware Corporation,

Defendant.

No. \_\_\_\_\_

DEFENDANT GOOGLE INC.'S  
NOTICE OF REMOVALTO: The Clerk, United States District Court  
for the Western District of Washington at Seattle

Defendant Google Inc. ("Google") is a party in the above-entitled civil action commenced on November 1, 2013, and still pending in the Superior Court of the State of Washington for King County, as Cause No. 13-2-37267-3 SEA. Through this Notice, Google prays that this action be removed to this Court from the Superior Court of the State of Washington for King County. Google provides a short and plain statement of the grounds for removal and includes copies of all process, pleadings, and orders served. 28 U.S.C. § 1446.

**A. The State Court Action**

Plaintiff ICF Technology, Inc. ("Plaintiff") filed a complaint against Google on November 1, 2013 in King County Superior Court seeking damages and injunctive relief because Google allegedly made it difficult for individuals to access Plaintiff's clients' websites through

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the Google search engine or Google-affiliated browsers. *See* Compl. (Notice of Removal App. 1) ¶ 7. Google was served on November 4, 2013. Together with the complaint, Plaintiff also filed a Motion for Temporary Restraining Order and Order to Show Cause that sought to preliminarily enjoin Google to reverse the alleged actions that it took against Plaintiff's websites. *See* Pl.'s Mot. for TRO & Order to Show Cause ("TRO Motion") (Notice of Removal App. 3). The TRO Motion has been fully briefed but has not yet been ruled upon by the court.

Google now removes this action from the Superior Court of the State of Washington for King County to the U.S. District Court for the Western District of Washington under federal removal statutes, 28 U.S.C. §§ 1441 and 1446.

## **B. Basis for Removal Jurisdiction in Federal Court**

This Court has original jurisdiction over the subject matter of this action under 28 U.S.C. § 1332 because Plaintiff and Google are citizens of different states and the amount in controversy is in excess of \$75,000, exclusive of costs and interest.

### **1. There Is Diversity of Citizenship**

Plaintiff alleges that it is a resident and citizen of the State of Washington. Compl. ¶ 2. Defendant Google is a corporation incorporated in the State of Delaware with its principal place of business in California and is not a citizen of the State of Washington. *Id.* ¶ 3. The diversity requirement under 28 U.S.C. § 1332(a) is therefore met.

### **2. The Alleged Amount in Controversy Exceeds \$75,000**

Plaintiff does not assert a specific amount in controversy in the complaint. It asserts claims for (1) interference with prospective advantage or business expectancy, (2) tortious interference with contract, (3) defamation, (4) injunctive relief, and (5) violations of Washington's Consumer Protection Act ("CPA"), Ch. 19.86 RCW. Plaintiff alleges that it is entitled to recover actual damages, treble damages up to \$10,000, and attorneys' fees under the CPA, Compl. ¶ 15.3, but does not otherwise specify the amount in controversy. Instead, Plaintiff seeks an award of damages "in an amount to be determined at the time of trial." *Id.* ¶ IV(1).

1 Because Plaintiff does not specify an amount in controversy, Google need only show by a  
 2 preponderance of the evidence that more than \$75,000 is in controversy. *See Sanchez v.*  
 3 *Monumental Life Ins. Co.*, 102 F.3d 398, 404 (9th Cir. 1996). This “burden is not daunting, as  
 4 courts recognize that under this standard, a removing defendant is *not* obligated to research,  
 5 state, and prove the plaintiffs’ claims for damages.” *Korn v. Polo Ralph Lauren Corp.*, 536 F.  
 6 Supp. 2d 1199, 1204-05 (E.D. Cal. 2008) (internal quotation marks and citation omitted)  
 7 (emphasis in original); *see also Valdez v. Allstate Ins. Co.*, 372 F.3d 1115, 1117 (9th Cir. 2004)  
 8 (“[T]he parties need not predict the trier of fact’s eventual award with one hundred percent  
 9 accuracy.”). A declaration or affidavit can satisfy the defendant’s burden on removal. *Lewis v.*  
 10 *Verizon Commc’ns, Inc.*, 627 F.3d 395, 397 (9th Cir. 2010) (“To satisfy its burden in this case,  
 11 the removing defendant . . . supplied an affidavit to show that the potential damages could  
 12 exceed the jurisdictional amount. We conclude that this showing satisfies Verizon’s burden.”).

13 Here, the allegations in the complaint as described below, combined with the records  
 14 filed in this case and the Declaration of Simon Conant in Support of Defendant Google Inc.’s  
 15 Notice of Removal (“Conant Decl.”) (Notice of Removal App. 2), demonstrate that Plaintiff has  
 16 put more than \$75,000 in controversy. (To be clear, Google disputes that it has *any* liability in  
 17 this action and further, that even if there were liability, Plaintiff has any viable damages theory  
 18 either factually or legally.)

19 Plaintiff alleges it is a “white label” website hosting company, and it also describes itself  
 20 more specifically as a “reseller host.” Compl. ¶¶ 4, 10. Plaintiff alleges that it is a host for  
 21 “several thousand” websites, which are its “Clients.” *Id.* ¶ 4 (“ICF is a ‘white label’ host for  
 22 thousands of third-party websites (the ‘Clients’).”). Plaintiff alleges that Google took a “manual  
 23 spam action” against the websites, which allegedly made it “nearly impossible . . . for  
 24 [Plaintiff’s] Clients’ subscribers (or anyone else) to access the Clients’ websites through the  
 25 Google search engine or Google affiliated browsers . . . .” *Id.* ¶ 7. In a cease and desist letter  
 26 that Plaintiff sent to Google one week before filing its complaint, Plaintiff attached a list of over

1,500 websites that allegedly were affected by Google's action. *See* Decl. of Rebecca S. Engrav in Supp. of Google Inc.'s Opp'n to Pl.'s Mot. for TRO & Order to Show Cause (Notice of Removal App. 4) ¶ 2, Ex. A. Plaintiff alleges that if Google does not reverse its manual spam action, "subscribers will terminate their subscriptions with the Clients, and the Clients will move their business to other reseller hosts, damaging [Plaintiff] . . . ." Compl. ¶ 10. Thus, Plaintiff alleges that it will lose the business of the over 1,500 websites allegedly affected by Google's manual spam action. In its TRO Motion, Plaintiff goes further, asserting that, "[n]ot only will [Plaintiff] lose existing Clients, but it will lose untold and unknown others who will not come to [Plaintiff] for services," TRO Mot. at 3, and in fact, that it may go out of business, *id.* ("[Plaintiff's] goodwill and reputation in the industry will be damaged, *maybe mortally.*") (emphasis added).

Thus, Plaintiff's theory of damages appears to be that 1,500 websites (Plaintiff's Clients) will cancel their contracts with Plaintiff and that other potential clients will not come to Plaintiff for reseller hosting. Even focusing solely on the existing Clients, Plaintiff's allegations put more than \$75,000 in controversy. The amount in controversy, based on Plaintiff's allegations (which, again, Google disputes both factually and legally), is at least (a) the fee it charges each Client, (b) multiplied by 1,500 websites. Plaintiff does not specifically allege the fees it charges its Clients, but publicly available information shows that in the industry, other reseller hosts charge a range of fees. *See* Conant Decl. ¶¶ 3-4, Exs. A-D. The average of the posted monthly charges for these other hosting services is \$50.92 per month.<sup>1</sup> *Id.* ¶ 4. Multiplying this average price by

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<sup>1</sup> The website SexTracker.com charges a minimum of \$150 per month for adult website hosting. Conant Decl. ¶ 5, Ex. E. SexTracker.com appears to be owned by Plaintiff. *Id.* ¶ 9, Ex. F. While it is unclear whether the hosting provided at SexTracker.com is the hosting to which Plaintiff refers in its complaint for the 1,500 websites at issue, it suggests that Plaintiff's reseller hosting prices are likely well above this average.

1,500 websites results in an alleged revenue loss to Plaintiff of \$76,380 in one month alone if, as Plaintiff alleges, all its Clients for the 1,500 websites leave and go to other reseller hosts.

Given that Plaintiff claims it is at risk of being put out of business entirely, it likely will argue that it is entitled to more than one month of lost fees. And, Plaintiff also seeks attorneys' fees, which are included in the calculation of the amount in controversy when authorized by statute, as they are here under the CPA. *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1156 (9th Cir. 1998) ("[W]here an underlying statute authorizes an award of attorneys' fees, either with mandatory or discretionary language, such fees may be included in the amount in controversy."); RCW 19.86.090 (authorizing fees). Additionally, Plaintiff seeks treble damages up to \$10,000, which are likewise authorized by the CPA. RCW 19.86.090. Adding attorneys' fees for the CPA claim and treble damages of \$10,000 to any alleged lost hosting fees further demonstrates that the amount in controversy is over \$75,000.

### **C. Propriety of Removal**

This action is removable to this Court under 28 U.S.C. § 1441 because this Court would have had original jurisdiction over Plaintiff's claims had Plaintiff elected to file the action initially in federal court. This Court is the United States District Court for the district and division embracing the place where the state court action is pending and is therefore the appropriate court for removal pursuant to 28 U.S.C. § 1441(a).

### **D. Receipt of Initial Pleading and Timeliness of Removal**

On November 4, 2013, Google first received a copy of the complaint in this action. This Notice is filed within thirty days of receipt as required by 28 U.S.C. § 1446(b)(1), (2)(B).

### **E. The State Court Complaint and Other Pleadings**

Attached to this Notice is a true copy of the complaint (Notice of Removal App. 1). All process, pleadings, or orders served on Google or filed in the state court in this action have been attached to the Verification of State Court Records, filed concurrently with this Notice.

**F. Intradistrict Assignment**

Google removes this action to the Seattle Division because Plaintiff's claims arose in King County.

DATED this 15th day of November, 2013.

s/ Rebecca S. Engrav, WSBA No. 33275

s/ John R. Tyler, WSBA No. 42097

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*Attorneys for Google Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on November 15, 2013, I caused to be served a true and correct copy of the foregoing on the following counsel of record as indicated:

Jackson Schmidt  
Pepple Cantu Schmidt PLLC  
1000 Second Avenue, Suite 2950  
Seattle, WA 98104

  X   Via hand delivery  
      Via U.S. Mail, 1st Class,  
      Postage Prepaid  
      Via Overnight Delivery  
      Via Facsimile

DATED this 15th day of November, 2013.

s/ Rebecca S. Engrav, WSBA No. 33275  
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*Attorneys for Google Inc.*

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## General Information

<b>Court</b>	United States District Court for the Western District of Washington
<b>Nature of Suit</b>	Statutes: Other Statutory Actions
<b>Docket Number</b>	2:13-cv-02068